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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Maitake Products, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	222 Bergen Turnpike1st Floor East Ridgefield Park, NJ 07660 UNITED STATES		

Attorney information	Stephen M. O'Neill Damon & Morey LLP 298 Main Street1000 Cathedral Place Buffalo, NY 14202 UNITED STATES soneill@damonmorey.com Phone:(716) 858-3865
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Registrations Subject to Cancellation

Registration No	2851225	Registration date	06/08/2004
Registrant	DVM Pharmaceuticals, Inc. 50 NW 176th Street Miami, FL 33169 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 20001100, First Use In Commerce: 20001200 Goods/Services: VETERINARY PHARMACEUTICAL PREPARATIONS FOR THE TREATMENT OF INTESTINAL DISEASES, DERMATOLOGICAL CONDITIONS, DIABETES, PAIN, VIRAL INFECTIONS, BACTERIAL INFECTIONS,		

	RESPIRATORY DISORDERS, ANXIETY, METABOLIC DISORDERS, DEPRESSION, PSYCHOSIS, ASTHMA, AND ALLERGIES		
Registration No	2847926	Registration date	06/01/2004
Registrant	DVM Pharmaceuticals, Inc. 50 NW 176th Street Miami, FL 33169 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 20001200, First Use In Commerce: 20010100 Goods/Services: FULL LINE OF VETERINARY[PHARMACEUTICALS] * PHARMACEUTICAL * PREPARATIONS, NAMELY, ANTISEPTICS, DISINFECTANTS, MEDICATED SOAPS, MEDICATED SHAMPOOS, MEDICATED CLEANING SOLUTIONS, RINSES, TICK AND FLEA KILLING PREPARATIONS, ANTIMICROBIAL, DIETARY SUPPLEMENTS AND NUTRICEUTICALS		
Registration No	2456636	Registration date	06/05/2001
Registrant	DVM PHARMACEUTICALS, INC. 4400 Biscayne Boulevard Miami, FL 33137 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 19961100, First Use In Commerce: 19961200 Goods/Services: Full line of veterinary pharmaceutical preparations, namely, antiseptics, disinfectants, medicated soaps, medicated shampoos, medicated cleaning solutions and rinses, tick and flea killing preparations, antimicrobials, dietary supplements, and nutraceuticals		
Registration No	2305068	Registration date	01/04/2000
Registrant	DVM Pharmaceuticals, Inc. 4400 Biscayne Boulevard Miami, FL 33137 UNITED STATES		
Goods/Services Subject to Cancellation	Class 005. First Use: 19961118, First Use In Commerce: 19970101 Goods/Services: house mark for a full line of pharmaceutical veterinary preparations		
Registration	2149925	Registration	04/14/1998

No	date
Registrant	DVM Pharmaceuticals, Inc. 50 NW 176 STREET Miami, FL 33169 UNITED STATES
Goods/Services Subject to Cancellation	Class 005. First Use: 19910400, First Use In Commerce: 19910400 Goods/Services: housemark for a line of pharmaceutical veterinary preparations
Grounds for Cancellation	The registered mark has been abandoned.

Attachments	DVMPetitionCancellation.pdf (5 pages)
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Signature	/Stephen M. O'Neill/
Name	Stephen M. O'Neill
Date	01/03/2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MAITAKE PRODUCTS, INC.,

PETITIONER,

v.

DVM PHARMACEUTICALS, INC.,

REGISTRANT.

Cancellation No. _____

Registration Nos. 2851225, 2847926,
2456636, 2305068
and 2149925.

“CONSOLIDATED” PETITION TO CANCEL

Petitioner Maitake Products, Inc. (“Petitioner”), a Delaware corporation having its principal place of business at 222 Bergen Turnpike, Ridgefield Park, New Jersey 07660, believes that it is damaged by Registrations Nos. 2851225, 2847926, 2456636, 2305068 and 2149925, and hereby seeks cancellation of same under the provisions of Section 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052(a), Section 2(e) of the Trademark Act of 1946, 15 U.S.C. § 1052(e), and Sections 14(1) and (3) of the Trademark Act of 1946, 15 U.S.C. § 1064(1) and (3).

Petitioner alleges grounds for cancellation as follows:

1. That Petitioner is the applicant in a pending application under serial no. 76/564158 for the mark “DVM FRACTION” for animal pharmaceutical preparations and animal feed additives for use as a nutritional supplement for pets and livestock which are made from mushrooms for the prevention and treatment of hypertension, obesity, diabetes, stroke, arteriosclerosis, hyperlipidemia, lyme disease, chronic fatigue syndrome, hepatitis, cancer, HIV positive/AIDS, allergies, asthma, arthritis and dermatitis in the forms of tablets, capsules,

tincture, extract, powder, granule and ampule for injection use; and for animal feed in bulk powder, granule, liquid and bar form, and animal feed additives for non-nutritional purposes for use as flavoring in International Class 5.

2. That Petitioner's application was refused registration under Trademark Act Section 2(d) because the examining attorney believed that Petitioner's mark, when used on or in connection with the identified goods, so resembles the marks in registration nos. 2851225, 2847926, 2456636, 2305068 and 2149925 (collectively "Registrant's Marks") as to be likely to cause confusion, to cause mistake, or to deceive.

3. That the registrations sought to be cancelled are owned by DVM Pharmaceuticals, Inc., 50 N.W. 176th Street, Miami, Florida 33169 ("Registrant") and are described below:

(a) Registration No. 2851225 – DVM (and design). The mark depicts a cat, a dog and a horse in right profile view with the letters "DVM" beneath the design. The listed goods are veterinary pharmaceutical preparations for the treatment of intestinal diseases, dermatological conditions, diabetes, pain, viral infections, bacterial infections, respiratory disorders, anxiety, metabolic disorders, depression, psychosis, asthma and allergies in International Class 5.

(b) Registration No. 2847926 – DVM Pharmaceuticals (and design). The mark depicts a cat, a dog and a horse in right profile view with the term "DVM Pharmaceuticals" beneath the design. The listed goods are a full line of veterinary pharmaceutical preparations, namely, antiseptics, disinfectants, medicated soaps, medicated shampoos, medicated cleaning solutions and rinses, tick and flea killing preparations, antimicrobials, dietary supplements, and nutraceuticals in International Class 5.

(c) Registration No. 2456636 – DVM (and design). The mark depicts a cat and a dog in right profile view with the letters “DVM” beneath the design. The listed goods are a full line of veterinary pharmaceutical preparations, namely, antiseptics, disinfectants, medicated soaps, medicated shampoos, medicated cleaning solutions and rinses, tick and flea killing preparations, antimicrobials, dietary supplements, and nutraceuticals in International Class 5.

(d) Registration No. 2305068 – DVM. The mark is simply the letters “DVM”. The listed goods are a house mark for a full line of pharmaceutical veterinary preparations in International Class 5.

(e) Registration No. 2149925 – DVM (and design). The mark depicts a cat or other small animal and a dog facing each other, with the stylized letters “DVM” as part of the design. The listed goods are a house mark for a line of pharmaceutical veterinary preparations in International Class 5.

4. Registrations Nos. 2851225, 2847926, 2456636, 2305068, and 2149925, when used on or in connection with Registrant’s goods, are merely descriptive and should have been denied registration pursuant to Section 2(e) of the Trademark Act, 15 U.S.C. § 1052(e).

5. That the dominant portion of each of Registrant’s Marks is the commonly used and recognized term “DVM” that identifies an individual who received the degree doctor of veterinary medicine and the subject matter focus of Registrant’s goods.

6. That the image or silhouette of a dog and cat and dog, cat and horse depicted in Registrant’s Marks are mere background designs that do not function as marks separate and apart from the words displayed on said marks.

7. That the images or silhouettes of dogs, cats and horses are merely or highly descriptive of Registrant's target market and the subject matter focus of Registrant's goods.

8. That, as applied to Registrant's goods, Registrant's Marks are merely descriptive or highly descriptive of the Registrant's target market group, namely, professionals in the field of veterinary medicine, and the subject matter focus of Registrant's goods.

9. That Registrant's Marks are so highly descriptive of Registrant's target market and the subject matter focus of Registrant's goods and are not, therefore, entitled to registration or exclusive appropriation.

10. That the letters "DVM", as well as the images or silhouettes of dogs, cats and horses, should be freely available to competitors and others in the advertising and promotion of similar goods and services intended for professionals in the field of veterinary medicine and pet owners.

11. That the use as a mark of the term "DVM Pharmaceuticals", or "DVM" alone, falsely suggests a connection with or approval by the veterinary medicine industry, and that on these grounds, Registrant's Marks should have been denied registration pursuant Section 2(a) of the Trademark Act of 1946, 15 U.S.C. § 1052(a).

12. That, upon information and belief, Registrant has abandoned Registration No. 2149925 through non-use or through a course of conduct that has caused the mark to lose significance as an indication of source, including, but not limited to, the use of Registrations Nos. 2851225, 2847926, 2456636 and 2305068 in place and instead of Registration No. 2149925, and, therefore, said registration should be cancelled pursuant to Section 14(3) of the Trademark Act of 1946, 15 U.S.C. § 1064(3).

13. That by reason of the foregoing, Petitioner believes that it will be irreparably damaged if Registrant's Marks are not cancelled.

WHEREFORE, Petitioner prays that Registrations Nos. 2851225, 2847926, 2456636, 2305068, and 2149925 be cancelled.

Dated: Buffalo, New York
January 3, 2005

DAMON & MOREY LLP

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